



The Censor

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V~~E~~KAT CENSURA COLUMBAS.

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IN my former papers I have considered the constitution of this province, and have endeavoured to obviate some popular mistakes and misapprehensions concerning it, and to shew that the measures of such as call themselves patriots tend to destroy and not to preserve the constitution.

I WILL now employ a paper in endeavouring to remove from the minds of the people some of the prejudices which they may have received from the artful insinuations of this set of men against his Majesty's Governor ; and I expect to be able to shew that his administration instead of exposing him to reproach or censure intitles him to the thanks of his country ; that he has shewn a strict regard to the preservation of its liberties, in return for the affronts, abuses, and slanders which have been thrown out without any sort of evidence to support them.

I AM very happy in having no concern with the publick affairs, I envy none that have. I am satisfied with viewing, and I have viewed with attention, such of the proceedings as have appeared in print during the several sessions of assembly, and, if these publick papers had been all which had appeared in print, I should have been satisfied that the Governor stood fully vindicated ;

ed ; and I am very certain that the generality of my countrymen, had they been furnished with the like evidence, would have been so far satisfied also, as that my present attempt would have been altogether needless. But it is our misfortune that notwithstanding the session of the assembly has been at an end yet the argument has always been continued in a certain news-paper on one side only, and with a pen so exactly like that which was principally employed while the assembly was sitting, that it is difficult to distinguish between them. In this way malice has triumphed, false and artful insinuations have been published, and the people have been imposed upon : A representation or report to the prejudice of any person, especially of a Ruler, easily obtains credit.

I WILL therefore attempt to prove that in the whole of the dispute between the Governor and Assembly until the present year, his Excellency could not have justified conceding to their requests or demands, but would have exposed himself to the just displeasure of his Sovereign. I say until the present year, because although the Governor, the first branch of the legislature and the Representative of his Royal Master in the province, may be and has been insulted and abused with impunity ; and the orders of the Council the second branch may be and have been treated with contempt, and all the members who were concerned in issuing them threatened with removal from their places ; yet such is the superior weight of the democratic part of our constitution, that I shall not say or insinuate any thing good or ill of the present third branch, that I may be sure not to incur their displeasure.

THE first subject of dispute was the removal of the Court from Boston to Cambridge. Just before Governor Bernard left the province in 1769 he prorogued the Assembly from the 15th of July to the 10th of January, by which means it was out of the power of the then Lieutenant Governor, Mr. Hutchinson to meet them sooner. Before this time arrived, the Lieutenant Governor further prorogued them, first, to the 15th of March to meet at Boston, and afterwards to the 16th to meet at Cambridge : And he tells them in his first speech that these prorogations were in conformity to the King's instructions, it having been his intention before he received them to meet the Court at the time to which they stood first prorogued.

THE immediate cause of these instructions does not appear ; but the conjecture was that they were occasioned by certain doings, not long

long before, in the town of Boston, and were intended as a mark of the King's displeasure against the town, and not as a punishment of the Court, as has been sometimes suggested. The House immediately took exception to the removal of the Court from Boston, and by a motion desired the Lieutenant Governor to carry it back, which he refused to do; and they thereupon passed divers resolves declaring their opinion that the Court could not legally be held any where except in the town of Boston, and gave this reason that a law of the province, which prescribes the form of a writ for calling the Assembly, expresses the *Town-House in Boston* as the place where the members are to meet. The Lieutenant-Governor had told them in answer to their first Message, that these words like the words *William the Third* in the same Writ were mere form; but they Resolved that they were substance, and protested against the illegality of holding the Court elsewhere, and justified their proceeding upon business, where they were, from the *absolute* necessity of the thing: They then went on to the ordinary business of the session and passed many acts, which are now part of the rule of law for the inhabitants of the province. As the exception appears groundless, it is hardly worth inquiring whether there could be an absolute necessity of proceeding to business at that time, or whether there was such necessity as to render valid those acts which, if the Assembly had been illegal, must have been invalid.

At the next session the House entered with more apparent resolution upon the same dispute and, after proceeding to the election of Councillors by an Assembly convened at a place where by law it could not be held if the opinion and resolutions of the former House had been well founded, they determine by a majority of 96 in 102 not to do any further business. It was prudent to proceed to the election of Councillors, because it was made their duty by charter to do it on a particular day, and when there were so many lawyers in the House they must without doubt have known that a refusal or neglect of a Corporation to choose its necessary officers has been deemed a forfeiture of the Charter; but, as the House observed, although they were obliged by charter to meet at such times as the Governor thought fit to convene them, yet there was no other business before them of such necessity as to endanger the constitution, if they omitted doing it. If the House had been of opinion that there was no business necessary to be done at that time, they had a right to decline doing business; if they declined doing business only because the Governor had used the prerogative contrary to their inclination, it very much alters the case. Urging the *illegality* as it had been urged in the former session was no longer

ger thought expedient, and the points principally relied upon, were the long continued practice of holding the Court at Boston and the inconveniencies to the members and the public by holding it any where else. It was likewise insisted on, and if it could have been supported, would have been much to the purpose, that if it could be admitted to be legal, and that the prerogative still remained in force, yet this prerogative was always to be used for the good of the people, and that the House had a right to judge when it was so exercised, and to do business or not do it accordingly.

It does not appear that the Council of the last year, though applied to by the House, doubted of the Governor's right to remove the Court; but divers new members having been elected, the Board this year soon discovered an inclination to support the House and agreed upon a message to the Lt. Governor much to the same purpose with what he had received from the House. They made no motions towards doing business for several weeks together and yet they were displeased with the Lieutenant Governor for supposing they had resolved to the contrary, and declare that they had never once made it the subject of debate whether they should do business or not.

THE Lieutenant Governor remarked to the Council and House, that it was explaining away the King's prerogative reserved by the charter, to admit that he had a right to convene the Court at such time and place as he thought proper, and at the same time to insist that the Council and House were to be judges when this prerogative was exercised aright and to conform or not conform accordingly.

BOTH sides adhered to their principles and after sitting from the 30th of May to the 25th of June without doing any business the Lieutenant Governor prorogued the Court to the 25th of July when a short session again commenced and ended the 3d of August, the Lieutenant Governor having anew recommended and the House further declined proceeding to business: But as no material new arguments were offered on either side, I pass to the next session which began the 26th of September.

It may well be imagined that such an inactivity in the Representatives should occasion a general dissatisfaction among the people; that it did so in some parts of the province, I am fully convinced. It is hard to recede; yet after about ten days exertion of all the force of patriotism to the contrary, about two
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thirds of the House broke through and voted to proceed to the publick business. The Council had much earlier in the session passed their votes as usual, and sent them to the House for their concurrence.

WHEN the next session began the 3d of April, there was only a delay of a day or two, the Lieutenant Governor, upon a short message from the House desiring him to remove the Court to Boston, having signified that he was still restrained from doing it and the House thereupon going on with business.

I MIGHT have observed that both Houses, in this controversy, insisted that the Lieutenant Governor's adjourning or proroguing the Court, in pursuance of an instruction, was a violation of the charter; the Crown having vested the Governor with the right of convening the Court, &c. and therefore that no instructions can supersede or controul that right. The Lieutenant Governor, among other things in answer, puts them in mind that the King had in as strong terms given the Governor the sole command of the Militia; but that no one could suppose the Governor was at liberty to employ the Militia directly against the King's prerogative. It is absurd to suppose that the King should vest his Governor with a prerogative independent of himself and destructive of his own: The evident meaning of the charter is, to determine that these powers do not lie either with the Council or with the House, but that they are vested in the Governor exclusive of their interference, although not exclusive of the King's authority.

UPON a view of this controversy it appears that it has turned principally upon the point of right; and the Governor in the course of it has observed that he could not give the right up, and that their insisting upon it was the bar to bringing back the Court: And agreeable to this observation when the House at the beginning of the session in May last addressed the Governor to carry the Court to Boston from a consideration of the inconveniencies of sitting at Cambridge, it appears by his Excellency's answer that he immediately closed with them and promised to represent the inconveniencies to his Majesty and made no doubt of success. I will not undertake, from any knowledge I have of the matter, to say what was the answer to this application; but I know the common report is, that leave was immediately granted, to remove the Court to Boston, and that upon the arrival of what is called a protest, it was revoked a few days after.

I HAVE represented this dispute impartially as far as I have been able to acquaint myself with it ; justice to an injured character has induced me to lay this state of the controversy before the Publick : And I believe there is no impartial reader who can possibly charge the Governor with a want of tenderness to the Court, or a desire of subjecting the members to any burden or inconvenience by convening them out of the town of Boston : There are none but what he shares in himself. On the contrary, it appears that he would have been culpable to a great degree, if he had departed from the instruction of the King his Master : Nor do I know the man among us that would have risked the King's displeasure by so doing, had he been in his Excellency's place.

FREEMAN.